

**371.405 Conditions governing enforceability of construction contracts -- Payment of amounts due.**

- (1) All payments on construction contracts entered into after June 26, 2007, shall be made pursuant to the terms of the contract and as required in this section and KRS 371.410.
- (2) The following provisions in a contract for construction shall be against the public policy of this Commonwealth and shall be void and unenforceable:
  - (a) A provision that purports to waive, release, or extinguish the right to resolve disputes through litigation in court or substantive or procedural rights in connection with such litigation, except that a contract may require binding arbitration as a substitute for litigation or require nonbinding alternative dispute resolution as a prerequisite to litigation;
  - (b) A provision that purports to waive, release, or extinguish rights provided by KRS Chapter 376, with the exception of partial waivers of lien rights provided by the contractor or subcontractor for progress payments; or
  - (c) A provision that purports to waive, release, or extinguish the right of a contractor or subcontractor to recover costs, additional time, or damages, or obtain an equitable adjustment of the contract, for delays in performing the contract that are, in whole or part, within the control of the contracting entity. Unusually bad weather that cannot be reasonably anticipated, fire, or other act of God shall not automatically entitle the contractor to additional compensation under this paragraph.
- (3) Subsection (2)(c) of this section shall not render null, void, and unenforceable a contract provision that:
  - (a) Permits a contractor or subcontractor to recover that portion of delay costs caused by acts or omissions of the contracting entity;
  - (b) Requires notice of any delay by the party affected by the delay;
  - (c) Provides for reasonable liquidated damages;
  - (d) Provides for arbitration or any other procedure designed to resolve contract disputes; or
  - (e) Specifies which costs are recoverable by a contractor or subcontractor for delay.
- (4) If a provision of a construction contract is found to be null and unenforceable, that provision shall not affect other provisions of the contract that are in compliance with this section and, to this end, the provisions of the contract are severable.
- (5) Except as provided in subsection (7) of this section, all contracts for construction shall provide that payment of amounts due a contractor from a contracting entity, except retainage, shall be made within thirty (30) business days after the contracting entity receives a timely, properly completed, undisputed request for payment.
- (6) Except as provided in subsection (7) of this section, if the contracting entity fails to pay a contractor within thirty (30) business days following receipt of a timely, properly completed, undisputed request for payment, the contracting entity shall pay

interest to the contractor beginning on the thirty-first business day after receipt of the request for payment, computed at the rate of twelve percent (12%) per annum on the unpaid amount. Twenty-five (25) business days following the submission of a timely, properly completed, undisputed request for payment, the contractor shall notify the contracting entity by certified mail if payment has not been received. The notice shall also include the date on which interest shall begin to accrue.

- (7) For purposes of subsections (5) and (6) of this section, a postsecondary institution and a board of education shall have forty-five (45) business days to make the payment required by those subsections. For purposes of payments by a board of education, the Department of Education shall have ten (10) business days, including the day the undisputed request for payment is received, to complete the final approval and application for payment and return it to the board of education. The ten (10) business days shall be included in the forty-five (45) business days. If the contracting entity fails to pay a contractor within forty-five (45) business days after receipt of the timely, properly completed, undisputed request for payment, the contracting entity shall, beginning on the forty-sixth day after receipt of the request, pay interest to the contractor computed at the rate of twelve percent (12%) per annum on the unpaid amount.
- (8) A contractor shall pay its subcontractors any undisputed amounts due within fifteen (15) business days of receipt of payment from the contracting entity, including payment of retainage if retainage is released by the contracting entity, if the subcontractor has provided a timely, properly completed, and undisputed request for payment to the contractor.
- (9) If a contractor fails to pay a subcontractor any undisputed amounts due within fifteen (15) business days of receipt of payment from the contracting entity, the contractor shall pay interest to the subcontractor beginning on the sixteenth business day after receipt of payment by the contractor, computed at the rate of twelve percent (12%) per annum on the unpaid amount.
- (10) Subsections (8) and (9) of this section shall apply to all payments from subcontractors to their subcontractors.

**Effective:** June 26, 2007

**History:** Created 2007 Ky. Acts ch. 136, sec. 2, effective June 26, 2007.